



June 28, 2018

Chairman Ajit Pai and Fellow Commissioners  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Room TW-A325  
Washington, DC 20554

Re: Interpretation of the Telephone Consumer Protection Act in Light of the D.C. Circuit's  
ACA International Decision

Dear Chairman Pai and Commissioners:

We appreciate the opportunity to provide comments for the FCC to consider as it contemplates updating its interpretation of the Telephone Consumer Protection Act ("TCPA") in order to provide clarity on the necessary communications with consumers.

The Allstate Corporation is the nation's largest publicly held insurer for personal lines, including auto and home policies. We protect about 16 million households from life's uncertainties, living up to our pledge: "You're in Good Hands with Allstate®." Allstate differentiates itself from its competitors by following the trusted advisor model. The trusted advisor model represents how we deliver the Allstate brand Customer Value Proposition through our agency force. Customers no longer come to us simply for a quote; they look to Allstate to provide continuing education about how to plan for and protect themselves and their families from life's risks. They look for and have come to expect personalized advice and customized service – backed by quality, easy-to-understand solutions that offer them real cost-effective protection from those risks. All of this is delivered by caring, knowledgeable, local agency owners, licensed sales professionals and financial specialists. Contacting our customers directly is critical to our trusted advisor model. However, the threat of lawsuits and TCPA class action liability impairs and limits our ability to interact effectively with our customers. As a result, our customers – the people the TCPA was designed to protect - are denied access to the full spectrum of valuable services and helpful information, leaving them more vulnerable to life's uncertainties. A rational, common sense interpretation of the TCPA, which has become a "gotcha" for companies trying in good faith to communicate with its customers, is needed. Some examples of areas where greater clarity will help consumers are provided below.

## Specific Comments

### I. Distinguishing between marketing vs. nonmarketing calls with customers

It is important to contact our customers to service their needs. Issues arise, however, when service calls have the potential to transition from basic service and updates to discussions of product offerings. When Allstate truly intends to have informational service calls, but the conversation shifts towards discussing products, it is unclear whether this call would be considered service or sales. The lack of clarity created by the TCPA impacts decisions on how service calls are placed, which can reduce our ability to efficiently and quickly contact such customers. Our trusted advisor model is predicated on being able to meet every need our customers have. The opportunity to handle evolving discussions during one point of contact is far more efficient and effective than having to stop a conversation to discuss consent agreements and other compliance issues to stay in the TCPA “safe zone.” Greater clarity is needed on this issue to effectively communicate with our customers to provide the service that they expect and deserve.

### II. Clarify whether prior express consent to call also permits consent to text

More often consumers use cell phones as their primary or sole means of communication and texting can be their preferred method of communication. Clarity is needed on whether consent to receive calls on a mobile device also means consent to receive text messages on that mobile device. When express consent to contact people at a certain number is obtained, this should be interpreted as communication by any means, including texts. Without FCC clarification, it leaves the door open for plaintiffs to file class action lawsuits to allege lack of consent for receipt of text communications.

### III. Consumer Harm

Consumer complaints about robocalling are frequently cited in support of a strict and narrow interpretation of the TCPA. In fact, very few consumers benefit from TCPA class action settlements. Plaintiff's counsel, however, benefit handsomely and often receive contingent fees of up to one-third of the overall value of the settlement pool. Actual payments to consumers, those allegedly harmed by the alleged TCPA violations, are *de minimus*. In most class action settlements, few eligible class members file claims and receive payment. Claims rates as low as 1%-2% are common, meaning that little of the vast sums of money being paid to settle TCPA cases is actually getting into consumers' hands.<sup>1</sup>

### IV. Good faith exception when you rely on information provided by the consumer

Occasionally, information is provided by the consumer that turns out to be wrong, such as transposed digits in a phone number, a 1 that is written and looks like a 7, etc. This incorrect information is relied upon in good faith when attempting to contact the consumer, but it could lead to a call or other communication to someone other than the person who provided consent, thereby resulting in a technical violation of the TCPA. There should be a good faith exception

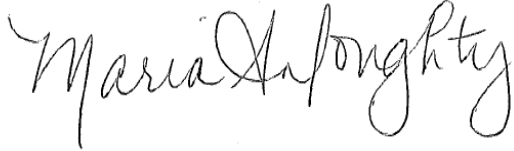
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<sup>1</sup> See, e.g. *Wood Dale Chiropractic, Ltd. V. DrFirst.com, Inc.*, No. 1:12-cv-00780, Dkt. No. 69 (N.D. Ill. Oct. 30, 2013) (1.97% claims rate); *North Suburban Chiropractic Clinic Ltd. V. Rx Security, Inc.*, No. 1:13-cv-06897, Dkt. No. 41-1 (N.D. Ill. Jan. 15, 2015) (.5% claims rate); *Agne v. Papa John's Int'l Inc.*, No. 2:10-cv-01139, Dkt. No. 384 (W.D. Wash. Oct. 8, 2013) (1.6% claims rate); *Spillman v. RPM Pizza, LLC*, No. 10-cv-0349, Dkt. No. 241 (M.D. La. May 23, 2013) (less than 1% claims rate).

from TCPA liability based on the company's good faith reliance on the information it received from the consumer.

We appreciate the opportunity to provide comments. Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink that reads "Maria Doughty". The signature is written in a cursive, flowing style.

Maria Doughty  
Director of Public Policy